CONVEYANCE OF LAND IN CONSIDERATION OF FUTURE SUPPORT OF GRANTOR BY GRANTEE.—Notwithstanding the fact that such conveyances are of constant occurrence, and are continually before the courts for interpretation, there has as yet evolved no uniform principle of construction. It is generally held that in a suit by the grantor for the breach of such an undertaking equity will grant relief, but the amorphous nature of the conveyance renders indeterminate both the character and grounds of such relief. Where the promise is given orally, such promise is sometimes given effect as a part of the deed, and the land held charged with a lien for support.[1] In some jurisdictions the conveyance, conditioned upon the support of the grantor, is construed as a conveyance, defeasible in case of nonsupport;[2] while in others, the promise of support is held to impose an equitable lien on the property conveyed, and title is not complete until performance.[3] A few courts treat the promise as imposing a beneficial interest in the grantor, the grantee holding the land upon an implied trust. This is the doctrine laid down by *Pownal* v. *Taylor*,[4] and *Lowman* v. *Crawford*,[5] following *Wampler* v. *Wampler*.[6]

Despite the disfavor with which courts regard conditions subsequent, and notwithstanding the general rule that such conditions must be expressly stated, some courts construe the conveyance as one upon condition subsequent, equity not forfeiting title but taking jurisdiction to quiet a title already forfeited.[7] And this is true even when the consideration of support is recited in a separate instrument,[8] or where the grantor has the separate remedy on a bond given him to secure performance.[9]

In some jurisdictions equitable relief in every form is denied, leaving the grantor to a common law action for damages for the breach of the covenant.[10] And this holding is in accord with the general rule that the mere failure by the grantee to discharge an undertaking, which forms the consideration inducing an executed conveyance, furnishes no ground for equitable interference.[11]

There would seem to be no doubt that damages for the breach of this agreement afford insufficient relief, the problematical lengtn

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[1] Patton *v.* Nixon, 38 Ore. 159, 52 Pac. 1048.
[2] Davis *v.* Davis, 81 Vt. 259, 69 Atl. 976, 130 Am. St. Rep. 1035.
[3] Childs *v.* Rue, 84 Minn. 323, 87 N. W. 918.
[4] 10 Leigh (Va.) 172.
[5] 99 Va. 688, 40 S. E. 17.
[6] 30 Gratt. (Va.) 454. This case is quoted with approval in Grant *v.* Bell, 26 R. I. 288, 58 Atl. 951. And see Reid *v.* Burns, 13 Ohio St. 49; Penfield *v.* Penfield, 41 Conn. 474.
[7] Glocke *v.* Glocke, 113 Wis. 303, 89 N. W. 118, 57 L. R. A. 458; Richter *v.* Richter, 111 Ind. 456, 12 N. E. 698; Watters *v.* Bredin, 70 Pa. St. 235.
[8] Richter *v.* Richter, *supra*.
[9] Wanner *v.* Wanner, 115 Wis. 196, 91 N. W. 671.
[10] Gardner *v.* Knight, 124 Ala. 273, 27 South. 298; Brand *v.* Power, 110 Ga. 522, 36 S. E. 53.
[11] Chicago, etc., R. Co. *v.* Titterington, 84 Tex. 218, 19 S. W. 472, 31 Am. St. Rep. 39.

of the grantor's life making such damages highly speculative and conjectural.[12] Nor can the court undertake to grant specific performance,[13] the treatment, the kindness, so necessary to the proper performance of the contract cannot be specifically enforced.[14] There seems to be but one remedy that works equity to all parties, and that is rescission.[15] This is the relief afforded in most jurisdictions.[16] The majority rule was followed in the recent case of *Grant* v. *Swank* (W. Va.), 81 S. E. 967.

However, the grounds for a rescission by a court of equity are entirely unsettled, some cases taking the ground that if no other head of equity jurisdiction can be referred to, a fraudulent intent in the first instance will be presumed;[17] others that the situation engenders the belief that proper performance was never intended;[18] while still others are content to justify equitable interference on the broad ground of the inadequacy of the remedy at law.[19] It would seem that a composite attitude including all these, the incapacity of the grantor, the fiduciary relation, the taint of fraud in the breach of contract rooted in this relation, and the inadequacy of a legal remedy, leaves rescission as the only means of furnishing complete relief in this peculiar situation.

DISQUALIFICATION OF JUDGES BY REASON OF RELATIONSHIP TO COUNSEL.—Under the common law from the earliest times a judge was disqualified by an interest in the cause.[1] The fundamental principles of justice require that every man be given a trial by judges "as impartial as the lot of humanity will admit." In attempting to meet this requirement the early expounders of the common law realized that it was well-nigh impossible for a man to be the impartial judge of his own case, and hence the disqualifying rule was early incorporated into the English common law and is of universal application today where that system prevails.[2] *Nemo debet esse judex in causa propria.* The application of this rule is

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[12] Reeder *v.* Reeder, 89 Ky. 529, 12 S. W. 1063.
[13] Mowers *v.* Fogg, 45 N. J. E. 120, 17 Atl. 296.
[14] Frazier *v.* Miller, 16 Ill. 48. But see, *contra*, Keltner *v.* Keltner, 6 B. Mon. (Ky.) 40; Elliott *v.* Elliott, 50 Tex. Civ. App. 272, 109 S. W. 215.
[15] Wilfong *v.* Johnson, 41 W. Va. 283, 23 S. E. 730.
[16] Cooper *v.* Gum, 152 Ill. 471, 39 N. E. 267; McClelland *v.* McClelland, 176 Ill. 83, 51 N. E. 559; Glocke *v.* Glocke, *supra;* Wilfong *v.* Johnson, *supra;* Lowman *v.* Crawford, *supra;* Grant *v.* Bell, *supra.*
[17] Cooper *v.* Gum, *supra.* [18] Frazier *v.* Miller, *supra.*
[19] Pownal *v.* Taylor, *supra.*
[1] Earl of Derby's Case, 12 Coke 114; 3 BLACKSTONE, COMM. 361; 5 BRACTON, t. 5, c. 15.
[2] See Pearce *v.* Atwood, 13 Mass. 324; State *v.* Castleberry, 23 Ala. 85; Wash. Life Ins. Co. *v.* Price, 1 Hopkins (N. Y.) 1; State *v.* Crane, 36 N. J. L. 394; Meyer *v.* San Diego, 121 Cal. 102, 53 Pac. 434, 66 Am. St. Rep. 22.